

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES RANDALL PATRELL,

Defendant-Appellant.

UNPUBLISHED

March 1, 2011

No. 295849

Antrim Circuit Court

LC No. 09-004284-FH

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted by jury of first-degree home invasion, MCL 750.110a(2)(b), and was sentenced to 45 to 240 months' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At approximately 2:30 a.m. on June 22, 2009, defendant and Patrick Lamb drove to the home of Lamb's former girlfriend, Tammy Sowers. Defendant's memory of the events that followed was clouded by the significant amount of alcohol he had consumed; however, he does not dispute much of the victims' testimony. Defendant forcefully kicked open the door of Sowers' home, awakening Sowers and her boyfriend, Lynn Hamp. Defendant claimed that his understanding was that the home belonged to Lamb and that Hamp did not belong there. Defendant and Lamb entered Sowers' bedroom and Lamb hit Sowers in the head. Defendant threatened Hamp and shook his fists as if he wanted to fight. When Lamb instructed him to do so, defendant dragged Hamp outside in his underwear and threw him off the porch.

Defendant then hit Hamp across the face as he tried to escape on his bicycle. When Hamp managed to ride his bicycle to his home several blocks away, Lamb and defendant chased him in their truck to continue the threats. Defendant and Lamb subsequently returned to Sowers' home. Sowers testified that defendant "stood there and was laughing about it" as she was again assaulted by Lamb. She further stated that defendant intervened on her behalf only when he was informed that the police would be arriving. The victims suffered minor injuries as a result of the assaults.

Defendant argues that the trial court erroneously scored fifty points for offense variable (OV) 7, MCL 777.37(1)(a). We disagree.

Sentencing courts have discretion when deciding the number of points to be scored for offense variables, provided that there is adequate evidence in the record to sustain a particular scoring. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Therefore, this Court's review is to determine if the trial court "properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009).

A sentencing court is to score fifty points for OV 7, aggravated physical abuse, if the defendant treats a victim with "sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). The trial court noted that the first-degree home invasion did not merely involve stealing, but involved "every home occupant[s] worst nightmare." Further, it found that defendant was an "active participant" in the "violent assaultive behavior," not merely a "reluctant attendee." We conclude that the trial court did not abuse its discretion in assigning fifty points, and that there is sufficient evidence in the record to support the score.

Defendant contends that the physical abuse of the victims did not exceed the bounds of an assault and battery so as to render the abuse excessively brutal, relying on *People v Wilson*, 265 Mich App 386; 695 NW2d 351 (2005). In *Wilson*, we affirmed the trial court's scoring of fifty points for OV 7 where the victim was subjected to a lengthy attack involving kicking, punching, slapping, and choking, resulting in injuries requiring a three-week confinement to a wheelchair. *Id.* at 398. Here, the nature of the attack was similar to that in *Wilson*. Sowers was subjected to repeated and varied physical abuse by Lamb and the attack was spread out over two separate time periods.

Defendant also asserts that fifty points could not be scored for OV 7 because there were no severe physical injuries. This Court has held that such a showing is not necessary. *People v Mattoon*, 271 Mich App 275, 277; 721 NW2d 269 (2006) (emotional or psychological abuse is sufficient to support scoring of fifty points for OV 7). The substantial fear and anxiety that defendant caused through his threatening demeanor and aggressive drunken behavior was sufficient to constitute "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). Defendant himself admitted that he and Lamb caused the victims to be terrified.

Defendant's reading of *Hornsby* to require a "pre-planned plot" to increase the fear and anxiety of the victims is also misguided. In *Hornsby*, this Court found that a defendant deliberately engaged in conduct designed to increase the victim's fear and anxiety when the defendant cocked a gun and repeatedly threatened to kill a store supervisor during a robbery. *Hornsby*, 251 Mich App at 469. This Court did not, as defendant argues, indicate that the decision rested on the existence of a pre-planned plot. It merely emphasized that the defendant engaged in conduct beyond the production of a weapon and demand of money required to establish the offense of armed robbery. See *id.* Here, defendant engaged in conduct, beyond the breaking and entering and assault required to establish the first-degree home invasion offense, MCL 750.110a(2)(b), which substantially increased the fear and anxiety of the victims.

In sum, the trial court did not abuse its discretion in scoring OV 7 at fifty points. There was sufficient evidence in the record demonstrating that defendant treated the victims with excessive brutality, and substantially increased the fear and anxiety of the victims.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause